

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

J.C. PENNEY CO., INC.

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS  
UNION, LOCAL 919, AFL-CIO

Petitioner

Case No. 34-RC-2114

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Petitioner seeks to represent a unit of approximately 725 Catalog Logistic Center associates (herein called CLC associates) employed by the Employer at its Manchester, Connecticut facility. Contrary to the Petitioner, the Employer would include an additional 350 Store Support Center associates (herein called SSC associates) who are also employed at the Manchester facility. For the reasons described below, I find that a unit limited to the CLC associates is inappropriate for the purposes of collective bargaining, and that an overall unit of CLC and SSC associates is an appropriate unit.

## 1. Overview of Operations

The Employer is engaged in the nationwide sale of consumer goods. The Manchester facility, which is one of nineteen logistic centers operated by the Employer as part of its supply chain operation, is responsible for the following services: 1) inbound receipt processing, which consists of receiving product into the facility; 2) order handling and fulfillment, which consists of organizing, storing and preparing the product for shipment; and 3) customer returns and reverse logistics, which consists of handling the return of product and supplies such as boxes, pallets, and security tags from retail stores. There is no history of collective bargaining for any of the employees at the Manchester facility.

The Manchester facility is divided into two distinct operations: 1) the Catalog Logistic Center (CLC), which provides services to the Employer's catalog division, and 2) the Store Support Center (SSC), which provides services to the Employer's retail division. The CLC receives product and stores it until it is sold to customers through the Internet, by telephone or by ordering at a catalog desk located in retail stores. When a customer places an order, CLC associates retrieve the product from storage and prepare it for shipping either directly to the customer or to one of the Employer's retail stores, where the customer may pick it up at a catalog desk. The SSC performs the same services for the Employer's retail stores, with the exception of storage of product. In this regard, the SSC receives and processes the product by, for example, placing security tags on garments, and then ships the product to the Employer's retail stores. Thus, the main difference between the CLC and the SSC is that the SSC only receives, processes and ships product to the Employer's retail stores, while the CLC receives, stores, and ships product directly to customers. Because the Employer considers the CLC and SSC as separate business units, all expenses, such as utilities and payroll, are separately allocated to each operation. Additionally, the product received into the facility is specifically designated for processing by the CLC or SSC, and, as described more fully below, is received, stored, processed and shipped separately within the facility.

Primarily responsible for the overall management and operation of the Manchester facility is General Manager Monte Winterhalter, who also directly oversees

the management and operation of the CLC. Reporting directly to Winterhalter with regard to local operations of the Manchester facility is Human Resources Project Manager Donna Koltick, who oversees all human resource functions at the Manchester facility, and SSC Operations Manager Richard Lester. Lester also reports to Store Support Director Richard Wallace, who appears to be located in Dallas, Texas, with respect to expenditures and directional guidance for the SSC operations.

## 2. CLC Operations

The CLC occupies an unspecified majority of the 2.2 million square foot Manchester facility, and is comprised of approximately 750 employees. There are approximately 10 departments within the CLC, each with a separate designated work area. CLC associates may work in any of these areas, and it is common that they are temporarily transferred between and among these areas. CLC associates unload product from the trucks in an area designated exclusively for CLC product, route the product to the correct storage area depending upon the size and type of product, prepare the product for sale, retrieve the product to fill orders, and pack and ship the product via carriers like Fed Ex or UPS. As noted above, CLC associates only handle product that is specifically designated for the catalog division. However, CLC product could be stored in SSC areas, and vice versa.

CLC operations are differentiated by the size and dimension of the product. In this regard, products weighing less than 13 pounds are received and stored in the “A” area, while products weighing more than 13 pounds are received and stored in the “W” area. Hanging garments have a separate storage area in the warehouse called “Area 6”, and items that are not needed for immediate sale are stored in an area called Central Warehouse. There is also a “return area” in CLC that receives and processes all returned product from catalog customers.

When a catalog order is placed, it is processed through the CLC based on the type of product. For example, if the order consists of items less than 13 pounds, the items are picked by an associate assigned to the “A” area, sent to a common packing area for packing and consolidation with any other order placed by the same customer, and then the entire order is sent to a common shipping area for all CLC products. However, when a catalog order needs to be shipped to a catalog desk located within a

retail store, the entire order is sent to the SSC shipping area, where SSC associates then prepare the product for shipment, as described below. In such situations, a CLC associate will transport the order to a staging area in the SSC. CLC associates utilize such equipment as computer terminals, stationary conveyor belts, a “Bombay sorter” that sorts product for shipment, and manually operated equipment, like forklifts.

### 3. SSC Operations

The SSC encompasses about 380,000 square feet of the Manchester facility and is comprised of about 350 employees. The SSC was added to the Manchester facility in about June 2003 and was initially staffed primarily by CLC associates and supervisors. The SSC consists of separate designated receiving, temporary storage and shipping areas for product that is destined for the Employer’s retail stores. Like the CLC associates, SSC associates receive, unload, move, process, prep and ship product.

Also like the CLC, the SSC is organized into a number of separate departments, and has its own receiving area, temporary storage area and shipping area for the products that it sends to retail stores. There is no product weight distinction in SSC, but there is a separate area for sorting and temporarily storing hanging garments. SSC also has a return area called the “reverse logistics department” that handles the return of cartons, pallets, security tags and other materials from retail stores. SSC associates may work in any of these areas, and it is common that they are temporarily transferred between and among these areas. The SSC uses a contracted carrier to ship its product as opposed to Fed Ex or UPS used by the CLC to ship its product. As noted above, the SSC also ships CLC orders to catalog desks located in retail stores. SSC associates, like CLC associates, utilize computer terminals, stationary conveyor belts, “Bombay sorters” and manually operated equipment like forklifts.

### 4. Terms and Conditions of Employment

Each CLC and SSC associate is assigned to one of approximately 19 different departments. Each department has its own manager and supervisors. Thus, although CLC and SSC associates have common overall management, associates within the CLC and associates within the SSC, for the most part, do not share common immediate supervision. However, SSC Second Shift Supervisor Tom Julian supervises the second shift SSC associates as well as CLC associates working the second shift in the “W”

receiving area. Julian was a former CLC supervisor who transferred to a supervisory position in the SSC.

While working in separate departments under separate immediate supervision, CLC and SSC associates perform essentially the same job duties in essentially the same job classifications utilizing essentially the same equipment, the only difference being specific job related functions depending on the area to which the employee is assigned. Also, by virtue of the fact that the SSC and CLC handle product that is destined for different entities, there are some job classifications/functions in CLC that are not identical to or do not exist in the SSC. For example, there are no “order fillers” to retrieve product from inventory in the SSC. However, SSC associates perform a similar function by organizing and consolidating SSC product for shipment to retail stores. There are certain job classifications that are not common to both the SSC and CLC. For example, there are CLC associates who perform alterations or monogramming on merchandise per specific customer orders, whereas SSC associates do not alter or monogram merchandise. Similarly, SSC associates put security tags on selected merchandise for retail stores, whereas CLC associates do not put security tags on the merchandise they ship to the customer.

All CLC and SSC associates work on three shifts, but with varied start times. They all receive wages within the same wage range and are paid on the same day, and are eligible for the same medical benefits, insurance and other fringe benefits. All associates wear the same identification badge, which also serves as a time card. Associates throughout the Manchester facility are subject to the same employee policies and rules, which are available to employees at computer kiosks located throughout the facility, and are subject to common personnel practices including hiring, new employee orientation, annual reviews and disciplinary procedures. Newly hired SSC and CLC associates participate together in a common orientation process. Although personnel issues like annual reviews and first level discipline are originated and effectuated at the departmental level, Human Resources Project Manager Donna Koltick oversees all such personnel matters for all associates. Second level discipline is reviewed by Koltick prior to implementation, and recommendations for termination are reviewed by both Koltick and Winterhalter prior to Koltick approving the termination. All

associates share the same break rooms and cafeterias, medical department, as well as common parking areas and facility entrances and exits. The main cafeteria that provides hot breakfast and lunch is located in the CLC and is used by all associates. A facility newsletter and the Employer's written answers to associates questions raised to the Employer in meetings or through an anonymous help line are distributed throughout the facility. With the exception of entry level jobs, all job openings within CLC and SSC are posted throughout the facility and all associates are eligible to bid on such job positions. Selection for such job openings is based on the associates' overall length of service and ability.

CLC and SSC associates have numerous opportunities to engage in work and non-work related contacts. In this regard, there are no physical barriers between the CLC and SSC work areas, and all non-work areas are available to all associates. Moreover, maintenance department associates from the CLC service equipment and machinery throughout the facility. The main battery charging area for the manually operated equipment, like forklifts, is located in the Maintenance department. If a battery needs to be charged, the SSC or CLC associate will drive the equipment to the maintenance department for charging. In addition, the supply department located within the CLC area supplies the entire facility. SSC and CLC associates visit the supply department to pick up supplies as needed. As noted above, catalog orders from the CLC that are being sent to a catalog desk at a retail store for customer pickup will be transported by a CLC associate to an SSC staging area. In addition, when an area mistakenly receives merchandise intended for another receiving area, it will be transported by an associate to the correct area. Thus, for example, if product intended for the SSC is mistakenly sent to and unloaded at the CLC, an SSC associate could go to the CLC receiving area to retrieve the product, or a CLC associate could transport the product to the SSC receiving area. There is also an "Emergency Response Team" made up of volunteer associates from both the CLC and the SSC who respond to certain emergency situations throughout the Manchester facility. There is also a facility wide safety committee that is comprised of SSC and CLC management personnel.

With regard to the temporary interchange of associates between the CLC and SSC, it is common for associates to be temporarily transferred for a few hours up to a

few weeks, depending on fluctuations in the volume of work. In this regard, during the months of January, February, March, May, July and December of 2004, which the parties stipulated was a “representative” period, approximately 24 SSC associates temporarily worked in the CLC on 62 different occasions for a total of 1,570 hours. Similarly, during the “representative” months of January, June, July, August and October 2004, approximately 20 CLC associates temporarily worked in the SSC on 49 different occasions for a total 1,924 hours. The record also shows that on at least one occasion, a CLC associate temporarily transferred to a supervisory position in the SSC, and then returned to his former CLC associate position.

With regard to the permanent interchange of associates between the SSC and CLC, in 2003 approximately 45 CLC associates transferred to positions in the SSC, and 4 SSC associates transferred to positions in the CLC.<sup>1</sup> In 2004, approximately 6 CLC associates transferred to positions in the SSC, and 29 SSC associates transferred to positions in the CLC. From January through March 2005, approximately 5 SSC associates transferred to CLC positions, and 2 CLC associates transferred to SSC positions. It is also common for supervisors and managers to transfer between the CLC and SSC. In 2003, when the SSC first opened in the Manchester facility, approximately 10 supervisors and managers from the CLC moved to supervisory or managerial positions in the SSC, and approximately 3 CLC associates were promoted to supervisory positions in the SSC. In April 2004, an SSC manager was returned to a supervisory position in the CLC. In January 2005, an SSC second shift manager was promoted to a managerial position in the CLC.

## 5. Conclusion

It is well established that the Board considers the following factors in determining whether the requisite community of interest is present among a petitioned-for unit of employees: uniform control of labor relations; interchange of jobs; similarity of skills; common conditions of employment; common supervision; operational integration; bargaining history; and geographical proximity. *Barbara George Inc.*, 273 NLRB 1239 (1984), citing *Sears, Roebuck & Co.*, 191 NLRB 442 (1971).

---

<sup>1</sup> As noted above, the SSC began operations in June 2003 with an initial complement of 100 to 200 employees, 75 to 100 of whom were from the CLC.

Based upon the foregoing and the record as a whole, I find that the petitioned-for CLC associates do not possess that degree of functional distinction and autonomy to warrant a finding that they have a separate community of interest, and that they do not constitute an appropriate unit for the purposes of collective bargaining. See *Publix Super Markets, Inc.*, 343 NLRB No. 109 (2004); *Barbara George Inc.*, supra; *Genuine Parts Co.*, 269 NLRB 1052 (1984); *BASF Systems Division*, 222 NLRB 712 (1976); *Riker Laboratories*, 156 NLRB 1099 (1966). In reaching this conclusion, I note particularly that although the CLC and SSC constitute separate business units within the Employer's corporate structure, CLC and SSC associates perform the nearly identical function of receiving, processing and shipping the same or similar products, with the only significant distinction being the ultimate destination of the product. Thus, although the product is received, stored and shipped separately based on this distinction, CLC and SSC associates perform the same or similar job functions under the same or similar terms and conditions of employment and utilizing the same or similar equipment in relation to what they do with the product. Moreover, CLC and SSC associates share common wages, fringe benefits, work rules, personnel practices, job bidding procedures, and overall management and supervision, and have numerous opportunities for work and non-work related contacts due to the physical layout of the Manchester facility and their specific job duties and responsibilities. Finally, I note that there is regular and ongoing temporary and permanent interchange of associates between the CLC and SSC.

The Petitioner has indicated its willingness to proceed to an election in any unit found appropriate. Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:<sup>2</sup>

---

<sup>2</sup> The unit found appropriate herein is broader than that sought by the Petitioner, and the Petitioner does not possess the requisite showing of interest in the broader unit. Accordingly, the Petitioner shall file with the undersigned the requisite showing of interest within 14 days of the issuance of this Decision and Direction of Election. In the event the Petitioner does not produce the necessary showing of interest or for any other reason does not desire to participate in an election in such a unit, it shall be permitted to withdraw its petition without prejudice upon written notice to the undersigned within 14 days of the issuance of this Decision. In the event the Petitioner does not timely request withdrawal or does not timely file the requisite showing of interest, the petition herein will be dismissed.



All full-time and regular part-time Catalog Logistics Center associates and Store Support Center associates employed by the Employer at its Manchester, Connecticut facility; but excluding human resources associates, accounting department associates, confidential employees, and guards, professional employees and supervisors as defined in the Act.

### DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 919, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon*

*Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before April 7, 2005. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 14, 2005.

Dated at Hartford, Connecticut this 31<sup>st</sup> day of March, 2005.

/s/ Jonathan B. Kreisberg  
Jonathan B. Kreisberg, Acting Regional Director  
National Labor Relations Board  
Region 34